HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 249 of 2003 (S/B)

Pankaj Kumar Bhatt
Vs
Bharat Sanchar Nigam Ltd & others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 07.06.2004

Initial of Judge

HIGH CORUT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 249 of 2003 (SB)

Pankaj Kumar Bhatt ..... Petitioner

Versus

Bharat Sanchar Nigam Ltd & others ..... Respondents

Sri Rajendra Dobhal, Advocate for the petitioner.
Standing Counsel (Central) for the respondents.

Dated: 7th June 2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

By the present writ petition the petitioner has prayed for the issue of a writ in the nature of mandamus directing the respondents to appoint the petitioner on a suitable post on compassionate ground under Dying in Harness Rules.

Briefly stated the facts giving rise to the present writ petition are that the father of the petitioner namely Sri Anand Mani Bhatt was working as Telephone Operator in the Telecommunication Department, Srinagar Garhwal, who died in harness on 5.1.2001 due to massive heart attack. The petitioner has submitted that after the death of his father, his mother had moved an application to the respondents for compassionate appointment of the petitioner Pandkaj Kumar Bhatt but since the post in Group- C was not available in the

office of respondent no.3, the petitioner was asked to take his appointment on a Group-D post. The petitioner has given his consent on 23.08.2001, stating therein that he is ready to work on Group –D post. However, the Deputy General Manager, Bharat Sanchar Nigam Ltd; Uttaranchal has issued an order on 23.10.2001 stating therein that the case of compassionate appointment of the petitioner has been considered by a committee under the Chairmanship of respondent no.2 but the name of the petitioner has been shown at serial no. 9 in the list of the candidates who were not found suitable for appointment on compassionate ground. The petitioner has submitted that his claim for appointment on compassionate ground has been rejected by the respondents without disclosing any reason.

The petitioner's mother further made a representation on 18.03.2002, in reply of which a letter-dated 27.05.2002 has been received by the petitioner from the respondents, in which the respondents have stated that the matter was investigated and considering the financial condition of the family of the petitioner, the case for compassionate appointment of the petitioner was not found suitable. The petitioner has stated that he, his mother, his grand mother and younger brother were solely dependent upon the salary of late Sri Anand Mani Bhatt and after his death the entire family of the petitioner is facing financial hardship and they are at the verge of starvation.

The petitioner has placed reliance on the Apex Court's judgment in the case of Smt. Shushma Gosai and others vs. Union of India and others, 1989 (4) SCC, 468. The Apex Court has held as under:

"*We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there*

should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent 2 to appoint Sushma Gosain appellant in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today."

The learned Standing Counsel for the respondents has argued that after the death of petitioner's father, his mother was given family pension and gratuity, G.P. Fund etc. and the financial condition of the family of the deceased is not so bad that appointment on compassionate ground may be given to the petitioner.

The learned counsel for the petitioner placed reliance on the judgment of a Division Bench of Allahabad High Court in the case State Bank of India vs. Ram Piyarey and others (2001)2 UPLBEC 15971, in which it has been held that receipt of family pension and payment of fund is no ground for refusal for employment under Dying in Harness Rules. The Court has held as under:

"In our opinion, the learned Single Judge was correct in holding that the receipt of family pension by the widow and a sum of Rs.1.42 lacs paid to widow after deducting the loan

cannot be taken to be a good ground for rejecting the case for appointment on compassionate ground. It is common knowledge that the widow is entitled to family pension and other benefits in the event her husband dies in harness. If the plea of the Bank is accepted then no appointment can be made on compassionate ground and the scheme of the Bank shall have no meaning. We are of the view that the learned Single Judge was quite justified in allowing the writ petition."

In view of above, the respondents were not justified for rejecting the claim of the petitioner for appointment on compassionate ground without assigning any reason.

Consequently, the writ petition is allowed. The respondents are directed the consider the appointment of the petitioner on compassionate ground under Dying in Harness Rules, within one month after filing of the certified copy of this order. There will be no order as to costs.

(Rajesh Tandon, J.)

7.6.2004
*Dhyani